

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



DOCKET FILE COPY ORIGINAL

July 12, 1996

VIA FEDERAL EXPRESS

Office of the Secretary
Federal Communications Commission
1919 M St., N.W. Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-128

Gentlemen:

Please find enclosed for filing an original plus fifteen copies of the REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING in the above-referenced docket and a diskette containing the same.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope

Yours truly,

Patrick S. Berdge
Patrick S. Berdge
Attorney for California

PSB:cdl

Enclosures

0714

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

DOCKET FILE COPY ORIGINAL

In the matter of)

Implementation of the Pay)
Telephone Reclassification and)
Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

**REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA
AND THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
ON THE NOTICE OF PROPOSED RULEMAKING**

PETER ARTH, JR.
EDWARD W. O'NEILL
PATRICK S. BERDGE

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1519
Fax: (415) 703-4432

July 12, 1996

Attorneys for the Public Utilities
Commission of the State of California

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. DISCUSSION.....	1
A. STATE ESTABLISHED PAY PHONE RATES VERSUS A NATIONWIDE FLAT RATE.....	1
1. RBOC Coalition.....	1
2. California Payphone Association.....	2
3. The American Public Communications Council.....	3
4. CPUC.....	4
B. PUBLIC POLICY PAY PHONES.....	5
1. RBOC Coalition.....	5
2. California Payphone Association.....	6
3. Southwestern Bell.....	7
4. New York State Department of Public Service.....	7
5. American Public Communications Council.....	7
6. CPUC.....	8
III. CONCLUSION.....	8

I. INTRODUCTION

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") respectfully submit these reply comments to the Federal Communications Commission ("FCC") on the notice of proposed rulemaking regarding the implementation of pay telephone reclassification and compensation provisions in the Telecommunications Act of 1996.

The CPUC comments filed on June 28, 1996 contained the prefatory statement that the California Commissioners would vote on the content of those comments on July 3, 1996. The comments as filed were approved by the CPUC at its July 3, 1996 conference.

II. DISCUSSION

A. State-Established Pay Phone Rates Versus A Nationwide Flat Rate

1. RBOC Coalition

Six Regional Bell Operating Companies ("RBOCs") submitted comments in this proceeding. Some of the six recommend a "transitional default rate" of approximately \$0.50 per call.¹ Others in the RBOC Coalition take a more moderate position against immediately setting a default rate moving to rates. These others in the RBOC Coalition take a position similar to that of the CPUC

¹ RBOC Payphone Coalition Comments at pp. 11-13

as outlined in its Opening Comments, i.e., the FCC should establish guidelines to be used by the states in setting fair and reasonable rates in their jurisdictions.² The CPUC favors the second approach recommended by some of the RBOC Coalition.

2. California Payphone Association

The initial comments of the California Payphone Association ("CPA") state that the FCC should prescribe a uniform national level of compensation for non-coin calls because the states have had "difficulty . . . in implementing a consistent scheme of compensation for payphone-originated non-coin calls."³ CPA argues that FCC intervention is required because the CPUC "has yet to enforce a requirement that IXCs [interexchange carriers] collect and remit compensation for non-coin pay station calls."⁴ The CPA notes, however, that the CPUC has required, and the IXCs have complied with, the filing of tariffs for billing, collection and remittance of the \$0.25 "pay station service charge" ("PSSC") charge for each non-sent-paid call. But, according to the CPA, the tariffs filed by some of the IXCs "incorporate exorbitant charges and assert intolerable needs for delay."⁵ Yet, the CPA fails to demonstrate why FCC

² RBOC Payphone Coalition Comments at pp. 21-23.

³ CPA Comments at pp. 3-5.

⁴ *Ibid.*

⁵ *Ibid.*

guidelines and state implementation of fair compensation rules could not correct this inequity.

3. The American Public Communications Council

The American Public Communications Council ("APCC") also submitted comments in this proceeding. Like the CPA, the APCC suggests that "the simplest, fairest approach is to prescribe a uniform 40-cent compensation rate that applies to all calls [coin and coinless]." ⁶ It must be noted that a nationwide flat rate for coinless calls will not be appropriate for all jurisdictions and, therefore, could easily result in overcompensation of private payphone operators ("PPOs") in some areas of the nation.⁷ Nevertheless, in support of its position, the APCC argues that this 40-cent flat rate would have two significant benefits: price predictability and industry stability.⁸ Price predictability is of little value to the consumer of telecommunications services if that predictable rate is set too high. And, industry stability is likewise of little value if it means little more than

⁶ APCC Comments at p. 12.

⁷ Aside from a flat rate set too high at the outset, AT&T, in its comments, notes that, "[i]f PSPs were guaranteed recovery of their commission costs through the statutory compensation mechanism, there would be inevitable pressure over time to include higher and higher commissions within the compensation system, which in turn would cause higher prices for consumers." (AT&T Comments at p. 9)

⁸ *Id.* at pp. 13-14.

guaranteed revenues for all PPOs from unnecessarily high rates.

The APCC also supports its call for a nationwide flat pay phone rate on the ground that the FCC, and the FCC alone, must set fair compensation for pay phone calls. "To carry out its responsibilities, the [FCC] cannot rely upon proceedings in other jurisdictions that it hopes will lead to fair results."⁹ To the contrary, the Telecommunications Act of 1996 preserves the jurisdiction and interests of the states so long as they are not in conflict with the FCC's regulations on such matters.¹⁰

4. CPUC

As California described in its opening comments, the CPUC has worked diligently with industry participants to establish per call compensation for non-coin calls. The CPUC has instituted a PSSC requiring that each LEC and AT&T provide \$0.25 per call (less a processing charge) to each "private pay phone operator" ("PPO") whose pay phone originates a non-coin intraLATA call. Moreover, the CPUC is currently resolving implementation issues pertaining to payment of this PSSC by MCI and Sprint, and expects to issue a decision on this

⁹ *Id.* at pp. 17-19.

¹⁰ Section 276 (c). The CPUC does not dispute that the FCC has "the primary role as guarantor that compensation for all calls be 'fair and reasonable'" (Southwestern Bell Comments at p. 3), only that the FCC must act in lieu of the states as asserted by APCC.

matter shortly.¹¹ Finally, as previously noted, the APCC, like the CPA and those RBOCs which advocate a nationwide 50-cent rate, would directly benefit from the likelihood of overcompensation from a high, nationwide flat pay phone rate. Although the payment of a PSSC by all carriers has met with some delays, resolution of this issue is imminent and any unfortunate delays incurred thus far cannot justify potential overcompensation of PPOs in the future.

The same holds true for coin calls from pay phones. The CPUC proposes that states continue to set coin rates for local pay phone calls within their discretion under FCC established national guidelines to be followed by the states in determining fair compensation. Under this scheme, states could tailor pay phone rates and services to meet local interests while still ensuring fair per call compensation to PPOs. This coordination of state and federal efforts would ensure pay phone regulation that is in the best interests of local competition and all telephone consumers.

B. Public Policy Pay Phones

1. RBOC Coalition

The RBOC Coalition's general position with respect to public interest pay phones is consistent with the CPUC's.

¹¹ MCI and Sprint filed tariffs to implement the PSSC on April 12, 1996. The CPUC received protests to these proposed tariffs in late April and May 1996 and responses from MCI and Sprint shortly thereafter. The CPUC is reviewing these filings and will resolve the relevant issues shortly.

As an initial matter, the Coalition believes that there is little need for Commission intervention in the public interest payphone market Because local governmental agencies bear responsibility for ensuring the “health, safety, and welfare” of the general public, only payphones provided at their request should qualify as “public interest payphones” within the meaning of the Act. (RBOC Coalition Comments at p. 46)

However, the RBOC Coalition suggests that to ensure that public pay phones are supported fairly and equitably, the FCC should “require the entity requesting the public interest payphone to pay for it.”¹² Such a system would not work under California’s public policy pay phone program because charitable organizations and community groups make the decision as to the need for and location of public policy pay phones.

2. California Payphone Association

The CPUC is gratified to see that the CPA also endorses California’s public policy pay phone program that it was instrumental in creating.

CPA strongly supports the recognition of public needs for the maintenance of payphones in certain locations where a payphone cannot be maintained economically without external support CPA believes the appropriate role of the [FCC] in this regard is the middle option – to set national guidelines, while leaving implementation as a responsibility of state authorities and those companies under state jurisdiction. (CPA Comments at pp. 21-2)

¹² RBOC Coalition Comments at pp. 46-7

3. Southwestern Bell

Southwestern Bell's position with respect to public interest pay phones is consistent with the CPUC's.

SWBT recognizes that there may be instances and circumstances in the states that it serves where public interest payphones are required. SWBT will provide and maintain payphones that are determined by the states to be public interest payphones. (Southwestern Bell's Comments at p. 8)

4. New York State Department of Public Service

The position of New York's Department of Public Service is very similar to the CPUC's.

NYDPS prefers the [FCC's] proposal to defer to the states to determine, pursuant to their own statutes and regulations, which, if any, payphones should be treated as "public interest payphones." (NYDPS' Comments at p. 8)

5. American Public Communications Council

The APCC's position on public interest pay phones is also similar to the CPUC's.

Because the assessment of the need for and the placement of such phones is particularly a matter of local knowledge and because the states have viewed some public payphones as particularly important in implementing universal service, the states would be authorized to administer public interest payphone programs . . . In addition, the states would be given the discretion to continue to determine the funding mechanism for such payphones, as the states do now. (APCC Comments at pp 46-7)

6. CPUC

In the six comments obtained by the CPUC prior to its submission of these reply comments,¹³ there was a general consensus that public policy pay phones should continue to be governed by the states. Under the circumstances, there appears little, if any, reason to deprive the states of the ability to create their own programs for the provision of public interest pay phones. California strongly urges the FCC to continue to allow the states to implement their own programs for the provision of public interest pay telephones.

III. CONCLUSION

For the reasons stated both in its opening and reply comments, the CPUC urges the FCC to consider the information and experience gained in California on pay phone compensation issues and permit the states to set appropriate

///

///

///

¹³ The six sets of comments obtained by the CPUC were submitted by the RBOC Coalition, the CPA, Southwestern Bell, AT&T, and the APCC.

levels of pay phone compensation for their citizens and establish appropriate public interest pay phone programs.

Dated: July 12, 1996

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
PATRICK S. BERDGE

By:

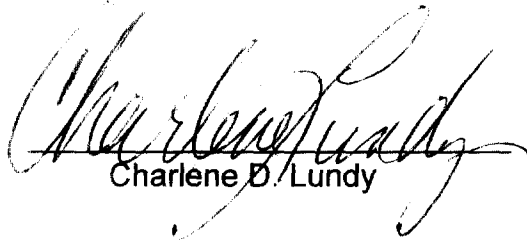

Patrick S. Berdge

505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1519
Fax: (415) 703-4432

Attorneys for the Public Utilities
Commission of the State of
California

CERTIFICATE OF SERVICE

I, Charlene D. Lundy, hereby certify that on this 12th day of July, 1996, a true and correct copy of the foregoing REPLY COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING in FCC Docket No. 96-128 was mailed first class, postage prepaid to all known parties of record.



Charlene D. Lundy

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.

- o Microfilm, microform, certain photographs or videotape.

- ✓ Other materials which, for one reason or another, could not be scanned into the RIPS system.

DISKETTE

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.